Supreme Court, U. S.
FILED
JUL 16 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

NO.

79-1762

TOWER LOAN OF MISSISSIPPI, INC.
PETITIONER

vs.

BESSIE LEE HARRIS
Respondent

BRIEF IN OPPOSITION TO CERTIORARI

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SUMMARY OF ARGUMENT

I. The facts of this cause do not present the rescission issue raised by petitioner. There is, therefore, no case or controversy with respect to this issue and petitioner has no standing to raise the issue.

II. The Fifth Circuit Court of Appeals has correctly interpreted the Truth-in-Lending Act to provide that tender by borrower is not a condition precedent to rescission of a deed of trust taken in connection with a loan transaction on the borrower's home.

III. The public importance of the rescission issued raised by petitioner has been greatly diminished by the enactment of the Truth-in-Lending Simplication and Reform Act.

IV. Legal Service programs are entitled to receive court awarded attorney fees.

I. PETITIONER HAS NO STANDING TO RAISE THE RESCISSION ISSUE.

As their major ground for urging their petition upon this court, petitioners argue that rescission under Section 125 of the Truth-in-Lending Act, 15 U.S.C. §1635, should be conditioned upon restitution by the debtor to the creditor of the amount of the loan proceeds. Factually this case does not present this issue to the Court. The amount financed by Tower Loan was $1,056.34. At the time that the district court rendered its judgement, Mrs. Harris had already paid Tower $1182.00. 609 F. 2d at 122. In addition, the District Court held and the Court of Appeals affirmed an award of a $1,000 statutory penalty against Tower on behalf of Mrs. Harris. Ibid. Thus, there was nothing for the District Court or the Court of Appeals to condition rescission on in this case. Mrs. Harris

had already paid to Tower more than she would be required to tender back if such a tender were required. Petitioner is therefore urging this Court to decide an abstract hypothetical issue, but there is no case or controversy on this issue for this court to decide. The petitioner has no injury in this case that would be redressed by the relief petitioner seeks on this appeal. Petitioner therefore has no standing to raise this issue.

Warth v. Seldin, 422 U.S. 343,498-9 (1975)

II. THE FIFTH CIRCUIT COURT OF APPEALS HAS CORRECTLY INTERPRETED THE TRUTH-IN-LENDING ACT TO PROVIDE THAT TENDER BY A BORROWER IS NOT A CONDITION PRECEDENT TO RESCISSION OF A DEED OF TRUST TAKEN IN CONNECTION WITH A LOAN TRANSACTION ON THE BORROWER'S HOME.

The purpose of the rescission provisions of Section 125 of the Truth-in-

Lending Act, 15 U.S.C. 1635, is clearly to assure that a borrower has all necessary credit disclosure information before placing a binding deed of trust on the borrower's home. The three-day cooling-off period provided by Section 125, therefore, does not begin until the borrower gets all the material Truth-in-Lending disclosures concerning the cost and terms of the credit being obtained from the lender. Id. Thus the Act precludes a loan company from avoiding the purpose of the rescission provisions by giving the borrower only incomplete credit information and then taking the position that the transaction cannot be rescinded because more than three days have passed since the transaction was consummated. Id. Small loan companies such as Tower Loan, petitioner herein, for the most part deal with low income borrowers. The reasons these borrowers go to small loan companies is

because they do not have any liquid cash resources, and cannot borrow from a bank or savings and loan associations. The money they receive from the loan company is spent immediately for the purpose for which it was borrowed. Thus, in the case at bar, Mrs. Harris borrowed the money to bury her husband and the money was paid to the funeral home. R.32 To allow a small loan company to provide incomplete credit information disclosures and then to be able to keep the deed of trust on the borrower's home until the load proceeds have been repaid as a condition to rescission of the deed of trust would clearly avoid the purposes of the rescission provisions of the Truth-in-Lending Act. Thus, the Fifth Circuit Court of Appeals has held in series of cases, Sosa v. Fite, 498 F. 2d 114 (5th Cir. 1974); Gerasta v. Hibernia National Bank 575 F.2d 580 (5th Cir. 1978), culminating with the instant

decision, Harris v. Tower Loan of Mississippi, Inc., 609 F. 2d 120 (5th Cir. 1980), that in the rescission of a loan transaction involving a deed of trust on the borrower's home, the creditor must cancel the deed of trust on the home without regard to whether the borrower tenders back the loan proceeds, but that the creditor maintains a right of set-off against the borrower for the amount loan proceeds. This follows the clear language from Section 125 (b) of the Truth-in-Lending Act, 15, U.S.C. 1635 (b):

> (b) When a obligor exercise his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission....

And although the lender loses its lien on the borrower's home as security for the repayment of the load proceeds, it still retains all other security it took for the loan. Thus in the case sub judice, far from being left without security by the court ordered cancellation of the deed of trust on Mrs. Harris' home, petitioner Tower Loan Company had taken a security interest in Mrs. Harris' furniture and had required Mrs. Harris to furnish three co-signers as further security for the repayment of a loan with a stated annual percentage rate of 34-66 per cent R.35.

III. THE PUBLIC IMPORTANCE OF THE RESCISSION ISSUE HAS BEEN GREATLY DIMINISHED BY THE PASSAGE OF NEW TRUTH-IN-LENDING LEGISLATION.

The public importance of this case has been greatly diminished by recent legislation. Title VI of the

of the Monetary Control Act of 1980, Public Law 96- 221, contains the Truth-in-Lending Simplication and Reform Act. Section 605 of the Act provides that the Federal Reserve Board shall publish model disclosures forms and clauses for lenders to facilitate compliance with the disclosure requirements of the Truth-in-Lending Act. The use of these forms insulates the lender from Truth-in-Lending liability, if correctly filled out. Since most of the Truth-in-Lending litigation concerns the forms used by the lenders, the Truth-in-Lending Simplication and Reform Act will greatly reduce the number of violations of the Truth-in-Lending Act. Thus, the issue pressed upon this Court by the petitioner is greatly diminished in public importance by virtue of the simplication of the Truth-in-Lending Act.

IV. ATTORNEY'S FEES AND THE LEGAL SERVICES CORPORATION.

Tower asserts that the Legal Services Corporation Act §§2996 et seq., prohibits because she is represented by attorneys employed by a legal services program funded under the Act. (P.B. 22-24). The Act does not,however, prohibit the award of statutory attorney's fees to legal services attorneys. The regulations promulgated pursuant to the Act clearly authorize the receipt of such fees, the fees going to the program and not to the individual attorney. 45 C.F.R. §1609.5. Moreover, the comments explaining these regulations urge legal services programs to seek and accept these fees where available:

> In recent years statutes have begun to include provisions for the award of attorneys' fees to successful plaintiffs, and §1609.5 encourages legal services programs to take advantage of this trend...Recepients are encouraged to take advantage of statutory provisions for attorneys' fees... Awards to recepients will increase their resources, and

> may encourage private attorneys to undertake similar cases on behalf of eligible clients.

41. Fed. Reg. 38505 (19 Sept. 1976). The Court of Appeals disposed of Tower's contention in its opinion:

> It is also argued that Legal Services was barred from accepting this case because the Act prohibits the use of Corporation funds to finance fee generating litigation. This apprasial of the statutory language is erroneous providing Legal Services complied with the regulations for accepting a fee generating case. 42 U.S.C. § 2996f(b)(1)(1976). Even if there was a failure to comply with the regulations, the proper recourse would be to complain to Legal Services, the State Advisory Council, or the Corporation; not resistance to a fee award. 45 C.F.R. 1618.3. This procedure is designed to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a legal services organization receiving funds under the Act. 45 C.F.R. 1618.1.

609 F. 2d at 124.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that all parties required to be served with copies of this petition for writ of certiorari have been served in that on this the 15th day of July, 1980, three copies of the petition were mailed to Pat H. Scanlon, Esq. 1440 Deposit Guaranty Plaza, Jackson, Mississippi 39201.

Barry H Powell

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